

HB 5791

Testimony of Judge William G. Kelly on behalf of the Michigan District Judges Association

MCL 257.904 (11) provides, as follows:

“(11) Upon receiving a record of a person’s conviction or civil infraction determination for the unlawful operation of a motor vehicle or a moving violation reportable under section 732 while the person’s operator’s or chauffeur’s license is indefinitely suspended or whose application for a license has been denied, the secretary of state immediately shall impose a 30-day period of suspension or denial.”

This bill would add the following language on page 5 of the bill:

“8 (11) Upon EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION,
9 UPON receiving a record of a person's conviction or civil
10 infraction determination for the unlawful operation of a motor
11 vehicle or a moving violation reportable under section 732 while
12 the person's operator's or chauffeur's license is indefinitely
13 suspended or whose application for a license has been denied, the
14 secretary of state immediately shall impose a 30-day period of
15 suspension or denial. THIS SUBSECTION DOES NOT APPLY IF THE
16 UNLAWFUL OPERATION OF A MOTOR VEHICLE OR MOVING VIOLATION UNDER
17 SECTION 732 OCCURRED WHILE THE PERSON'S OPERATOR'S OR CHAUFFEUR'S
18 LICENSE WAS SUSPENDED UNDER SECTION 321A, 511, OR 732A.

Under the current law, the driver’s license would be suspended an additional 30 days (unless the license was suspended for only one ticket and this is the first time driving on a suspended license) and the driver would have to pay a \$125 reinstatement fee even if the person’s license had been suspended for financial reasons:

failure to pay a ticket or Friend of the Court (MCL 257.321A),
failure to comply with a financial responsibility requirement (MCL 257.511), or
failure to pay a Driver Responsibility Fee (MCL 257.732A).

This bill would eliminate the 30 day suspension and reinstatement fee for the people whose license was suspended for financial reasons. The additional suspension would be imposed if the license had been suspended for other reasons.

Often, judges see people who have cleared up their unpaid tickets or their driver responsibility fees, or their unpaid civil judgments and then after court their licenses are suspended for another 30 days and they have to pay another \$125 reinstatement fee because of the current law. Most of these people are struggling with their finances already.

The driver whose license has been suspended for failure to pay a ticket has to pay a \$45 reinstatement fee for each ticket for which the license has been suspended. The money is split between the court and the Secretary of State.

The person whose license has been suspended for not paying a Driver Responsibility Fee has to pay a \$125 reinstatement fee to the Secretary of State. This money is split between the Secretary of State and others.

The person whose license has been suspended for an unsatisfied civil judgment has to pay a \$125 reinstatement fee to the Secretary of State. This money is split between the Secretary of State and others.

Sometimes, the person pays the reinstatement fee in order to clear the person's license only to find out that he or she will have to pay another \$125 reinstatement fee.

If the person does not clear his or her Driver Responsibility Fee suspension or Financial Responsibility suspension, the person's license will still be suspended. If they wait to clear their license after the 30 day trailer suspension ends, they pay one \$125 reinstatement fee to reinstate the license.

Yesterday, I saw three people in court who had cleared their licenses. Two had paid the \$125 reinstatement fee and the other had paid the \$45 reinstatement fee to a court. They all had plead not guilty so the prosecutor's office had to open three files. The prosecutor offered each of them a reduction to Allowing an Unlicensed Person to Drive. This offense is not abstracted to the Secretary of State so the Secretary of State will not suspend their licenses and they won't have to pay the additional reinstatement fees. As a result, the prosecutor and the court had more work in order to avoid the Driver Responsibility Fees and this 30 day trailer suspension with its \$125 reinstatement fee.

This bill would allow a person to clear up their drivers license by paying the appropriate financial penalties for unpaid tickets, driver responsibility fees, or unsatisfied judgement that he or she owes and then be able to obtain a valid license so he or she can drive legally. If a person's license is suspended for other reasons, such as drunk driving, the person's license would be suspended for a further period.

Although, this is referred to as a reinstatement "fee", this can be considered as a "tax".

"Generally, a "fee" is "exchanged for a service rendered or a benefit conferred, and some reasonable relationship exists between the amount of the fee and the value of the service or benefit." *Saginaw Co, supra* at 210; *Vernor v Secretary of State*, 179 Mich. 157, 164, 167-169; 146 N.W. 338 (1914). A "tax," on the other hand, is designed to raise revenue. *Bray v Dep't of State*, 418 Mich. 149, 162; 341 N.W.2d 92 (1983)."


Bolt v. City of Lansing, 459 Mich. 152, 161 (Mich. 1998)

We recognize that if some people are not required to pay an additional \$125 reinstatement fee, this would result in a tax decrease for the people who now have to pay this "fee" twice. This money is split, as follows:

Secretary of State:	\$50
Department of Transportation:	\$35
Drunk Driver Training	\$10
Drunk Driving Caseflow Assistance	\$30

We are working with the Secretary of State to see if we can overcome this issue.

September 20, 2016


William G. Kelly
District Judge